RIVERSIDE GROUP, INC.

IBLA 94-80 Decided January 28, 1998

Appeal from a Decision of the Nevada State Office, Bureau of Land Management, upholding in part a Decision of the Winnemucca District Manager involving activities on a mining claim regulated under 43 C.F.R. Subpart 3809, and remanding the case to the District Office for further action. N26-88-072N.

Reversed.

1. Bankruptcy Code: Confirmation of Plan--Federal Land Policy and Management Act of 1976: Surface Management--Mining Claims: Surface Uses

   Under 43 C.F.R. § 3809.3-2, a Notice of Noncompliance is properly issued to the operator of a mining claim. A State Director's Decision affirming BLM's issuance of a Notice of Noncompliance and Record of Noncompliance to a corporation formed to manage the affairs of the owner of the mining claim which is in bankruptcy will be reversed where there is no evidence to show that the corporation has assumed any obligations of the operator of the claim.

APPEARANCES: Donald M. Coon, Secretary/Treasurer, Riverside Group, Inc., Palm City, Florida; State Director, Nevada State Office, Bureau of Land Management, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Riverside Group, Inc. (Riverside), has appealed from a Decision of the Nevada State Office, Bureau of Land Management (BLM), dated September 22, 1993, affirming in part a Decision by the Winnemucca District Manager, BLM, involving activities on the New Era No. 2 placer mining claim (NMC No. 268173), regulated under 43 C.F.R. Subpart 3809, and remanding the case to the Winnemucca District Office for further action.

Pursuant to 43 C.F.R. § 3809.1-3, a Notice of Operations dated March 14, 1988, for mining activity on the New Era No. 2 mining claim

was originally filed with the Winnemucca District Office on April 21, 1988, by the Beyer Corporation, as operator of the claim, for "John A. Peterson, et al" as claimants. Peterson and the other claimants sold the New Era Nos. 1-4 mining claims to Sunlite Mining Ventures, Ltd. (Sunlite), a limited partnership organized under the laws of Florida, by deed dated April 17, 1988, with a reserved mineral royalty. 1/ An amended notice filed with BLM on January 24, 1989, showed Gold Equity Management Company (GEMCO) as the new operator and Sunlite as the new claimant.

Sunlite's attempts to establish a commercial mining and milling operation were unsuccessful and by November 1991 Sunlite was insolvent. In December 1991, Riverside Group, Inc., a Nevada corporation, was formed by several of the limited partners/investors of Sunlite to take over the day- to-day management of the partnership and attempt to save the partnership by developing a plan for continued operation. In February 1992, Sunlite and GEMCO filed petitions under Chapter 11 with the United States Bankruptcy Court for the Southern District of Florida (Case Nos. 92-30398-BKC-RAM and 92-30399-BKC-RAM), and the court confirmed their Joint Plan of Reorganization as Modified on November 18, 1992.

Meanwhile, on August 14, 1992, the District Manager issued a Notice of Noncompliance to GEMCO under 43 C.F.R. Part 3809. The Notice was returned as undeliverable, so on September 4, 1992, the District Manager issued the Notice to Harold C. Bond (and others named in the April 17, 1988, deed, note 1 supra) as a claimant, stating that "[c]laimants * * * are responsible for [the operating requirements of Part 3809] when an operator is no longer present." Although these persons received the Notice, none of them responded or appealed.

On October 21, 1992, having heard that Riverside owned the Sunlite mill, the District Manager issued the Notice of Noncompliance to it as "owner." 2/ The Notice cited the requirements of 43 C.F.R. § 3809.3-7 which states that "operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition" and "may be required, after an extended period of non-operation * * * to remove all structures, equipment and other facilities and reclaim the site of operations * * *." It also cited 43 C.F.R. § 3809.1-3 which provides that reclamation shall include "[m]easures to isolate, remove, or control toxic

---

1/ The deed was made "by John A. Peterson and James A. Peterson, on behalf of themselves and on behalf of, and as attorney-in-fact for, Joyce Beckett, Rosemary Peterson, Gail L. Openshaw, Harold Bond and Janis Bond, all being collectively * * * referred to as 'Grantor' * * *."

2/ An Oct. 16, 1992, BLM memorandum states: "Riverside Group is working with GEMCO in some manner, but Haueter didn't clarify that relationship." Haueter was the manager of another mill owned by the Riverside Group, Inc. An Oct. 20, 1992, BLM Conversation Record by Steve Brooks states: "I asked [Haueter] if Riverside owned the Sunlite Mine—[he] said they did."

materials * * *." An August 6, 1992, inspection of the site "revealed that chemicals are improperly stored on the site and pose an imminent hazard to human health and the environment," the Notice stated. The Notice required Riverside to submit a list of all chemicals onsite and a plan for their disposal. It also required Riverside to submit a report assessing residual soil contamination and a reclamation plan with timeframes for completion of the work. Time limits were set for compliance with these requirements.

Riverside responded to the Winnemucca District Office by letter dated November 11, 1992, which included a copy of Riverside's letter to the Nevada State Office dated November 10, 1992, and the April 17, 1988, deed. The November 10 letter to the Nevada State Office informed BLM that Riverside was managing the day-to-day affairs of Sunlite under an approved Plan of Reorganization and explained that it was attempting to organize the paperwork regarding Sunlite's mining claims. Riverside requested that BLM recognize Sunlite as the owner of the New Era Nos. 1-4 mining claims. In its November 11 letter to the District Office, Riverside stated:

> Rex Haueter advised me that he has almost completed all of the corrective action BLM requested in the letter dated October 21, 1992. Hopefully you are satisfied with his efforts to correct the situation reported in the BLM letter. We have suggested to Rex that he continue direct communication with your office until all matters in the October 21, 1992, letter have been resolved to your satisfaction. As far as our plans for the plant and claims are concerned, we are working diligently to formulate plans for some production at the plant this spring. As our plans are completed we will, of course, file the appropriate documents with BLM for operating permits.

Finding that this November 11 letter was "not responsive to the Notice of Noncompliance," 3/ the District Manager issued a Record of Noncompliance Decision to Riverside on December 3, 1992. The Decision required that Riverside submit a Plan of Operations and post a reclamation bond adequate to cover 100 percent of the anticipated reclamation costs.

Riverside appealed the December 3, 1992, Decision to the State Director pursuant to 43 C.F.R. § 3809.4. It enclosed the Bankruptcy Court's November 18, 1992, Order Confirming Joint Plan of Reorganization as Modified, explained that it had been "authorized by the Court to continue working with Sunlite * * * in an effort to implement the Plan * * * and get the partnership on a sound financial footing," and recited its efforts to do so. Riverside stated that after its on-site meeting with BLM on

---

3/ "Compliance with the conditions of the Notice of Noncompliance would require responding in writing to all issues in the Notice item-by-item and approval by the authorized officer of your proposed actions," the District Manager's Dec. 3, 1992, Decision stated.

October 30, 1992, it moved some of the chemicals from outside storage into the locked buildings and moved the balance from the site to its Riverside, Nevada, plant according to BLM's instructions. No soil contamination from leaking chemicals was identified at this meeting, Riverside stated. In Riverside's view, "the plant and facility are in a safe and orderly condition, which should have satisfied all of the alleged violations in the Notice of Noncompliance." Riverside claimed that it had been responsive and diligent in its efforts to properly maintain the plant and facilities as required by BLM. "We will continue to be responsive to requests from BLM regarding the maintenance and operation of the plant and facility belonging to Sunlite," Riverside concluded.

The State Director's September 22, 1993, Decision reviewed the record and stated:

> [T]he Winnemucca District Manager was within his authority to issue both a Notice and Record of Noncompliance to the Riverside Group, Inc. The unique financial status of Sunlite Mining Ventures, Ltd. and the takeover of responsibilities by the Riverside Group, Inc., however, create a special situation not specifically covered in the surface management regulations at 43 CFR 3809. Therefore, due to the special management and financial situations and the Riverside Group's apparent willingness to correct the noncompliance situation on the New Era #2 placer mining claim, it has been decided to return the case file to the Winnemucca District Office for further action. Further action will be required of both the Winnemucca District Office and the Riverside Group in a further attempt to resolve the noncompliance issues associated with this case.

The State Director's Decision established deadlines for an inspection of the site by the Winnemucca District Office and submission by "the operator(s)" of a plan of operations and a reclamation bond in an amount determined by the Winnemucca District Office. "As a result of the activities conducted on the subject claim, it is the operator's responsibility and liability to meet his/her obligations as noted in the 43 CFR 3809 regulations," the State Director's Decision concluded.

On appeal, Riverside asserts that the Notice of Noncompliance and the Record of Noncompliance were improperly issued to Riverside because it is neither the claimant of the New Era No. 2 mining claim nor the operator of the millsite on that claim. Riverside points out that Sunlite is the claimant of the New Era No. 2 mining claim and GEMCO is the operator, and therefore the Notice of Noncompliance and Record of Noncompliance should have been addressed to them. Riverside states that it was not required legally or contractually to respond to the Notice by taking corrective action, but did so in an effort to help Sunlite. According to Riverside, its only interest is to help preserve Sunlite's assets for the benefit of the limited partner investors. Riverside notes that it has not assumed

any of Sunlite's assets or liabilities, but has only tried to work with all interested parties in an attempt to originate some worthwhile activity at the millsite utilizing Sunlite's assets. Furthermore, Riverside asserts that it is not legally or contractually obligated to fund Sunlite's operations or to correct conditions at the millsite which preceded the existence of Riverside.

By Order dated October 22, 1996, we requested BLM to submit a status report advising whether the noncompliance it sought to have remedied had been satisfactorily resolved and, if so, whether this appeal might be dismissed.

In response, Riverside informed BLM on November 18, 1996, that the necessary funding for the site cleanup, the preparation and approval of the Plan of Operation, the posting of an appropriate reclamation bond, and the start-up of operations had been arranged and was immediately available.

The BLM Associate State Director, Nevada, responded on December 6, 1996, enclosing a report prepared by the Winnemucca District Manager, who advised that "the Sunlite Mine and Mill remain in substantially the same condition as when the Record of Noncompliance was issued on December 3, 1992." He described the property as being "in an inactive status in an unsecured and unreclaimed condition," and identified seven "non-compliance items." The District Manager reported that it had been informed by Riverside that it would file a Plan of Operations and post a reclamation bond, if further testing of the playa clays indicated a viable ore deposit and, in the meantime, would work with BLM to clean up the chemicals and the unneeded equipment and junk on the site. If further testing did not indicate a commercial ore deposit, Riverside stated that it would abandon the project and do no further cleanup or reclamation, which it considered to be the responsibility of Sunlite and GEMCO.

On August 28, 1997, we issued another Order stating that neither BLM nor Riverside had notified us whether the noncompliance had been remedied and requested Riverside and BLM to report whether it had been.

Riverside advised the Board that it had performed the millsite cleanup and that all of the conditions listed in the Record of Noncompliance relating to hazardous materials and conditions had been properly eliminated.

In its status report, the Acting District Manager acknowledged that Riverside had expended considerable effort since the status report of December 3, 1996, to improve the noncompliance situation. However, he stated that excavations still required backfilling or recontouring, buildings and equipment remain to be removed, miscellaneous items must be cleaned up, and the area must be seeded to reestablish native vegetation. The Acting District Manager stated that the Record of Noncompliance had not been resolved. At the request of Riverside, BLM agreed to a short-term postponement of a contest hearing on the validity of the New Era No. 2 placer mining claim on which the Sunlite mine and mill are located, in

order to afford Riverside reasonable time to get its samples assayed and its case prepared. The Acting District Manager requested that we rule on the merits of Riverside's appeal so that BLM will know the extent to which it can hold Riverside responsible for resolving the remaining items of noncompliance.

[1] Riverside has made a good faith effort to alleviate the situation on the claim, but it is not required to comply with the terms set forth in the Notice of Noncompliance and Record of Noncompliance.

Departmental regulation 43 C.F.R. § 3809.3-2 provides that a notice of noncompliance shall be served to the operator who is "conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title." An operator is defined as "a person conducting or proposing to conduct operations." 43 C.F.R. § 3809.0-5(g).

The regulations clearly state that a notice of noncompliance be issued to an operator. The amended notice filed with BLM on January 24, 1989, listed GEMCO as the operator of the New Era No. 2 mine. Therefore, GEMCO was properly served with the Notice of Noncompliance on August 14, 1992. The "special situation" to which the State Director referred in his September 22, 1993, Decision does not make Riverside an operator within the meaning of the regulations.

The Bankruptcy Judge's November 18, 1992, Order Confirming Joint Plan of Reorganization as Modified contains nothing which would make Riverside responsible for compliance with BLM's Notice. Riverside has not been named as trustee in the proceedings and has not been assigned any duties in relation to Sunlite which would be significant to this appeal. Nor is there any information in the case file which would indicate that Riverside had agreed to assume any obligations of Sunlite or GEMCO. Compare with William H. Pullen, Jr., 132 IBLA 224, 225, 226 n.4 (1995) (American Standard Coal Company, Inc., guaranteed Jackson County Mining Corporation's (JCMC) obligations under performance bonds and proceeded to perform reclamation work on the mining permits subsequent to JCMC's bankruptcy); Lone Star Steel Co. (On Reconsideration), 124 IBLA 144, 146-147 (1992) (automatic stay of the Bankruptcy Code does not bar proceedings against a surety on a coal lease bond securing the debtor's obligations under the lease).

The Bankruptcy Code provides that the effect of confirmation of the plan in bankruptcy is to make the provisions of the plan binding on both the debtor and the creditors. 11 U.S.C. § 1141(a) (1994). Except as otherwise provided in the plan or in the order confirming the plan, confirmation of a plan discharges the debtor from debts that arose before the date of confirmation. 11 U.S.C. § 1141(d)(1) (1994); 9B Am. Jur. 2d Bankruptcy § 2515 (1991). See also Great Western Petroleum & Refining Co., 124 IBLA 16, 27 (1992). We need not consider the effect of the bankruptcy

proceeding on this appeal, because Riverside is not the debtor. Sunlite and GEMCO are the proper parties to assert bankruptcy as an affirmative defense.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed.

_____
Will A. Irwin
Administrative Judge

I concur:

_____
James P. Terry
Administrative Judge